

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JO ANNE E. HASELTINE,)	
)	
Plaintiff(s),)	No. C07-1605 BZ
)	
v.)	ORDER GRANTING IN PART
)	PLAINTIFF'S MOTION FOR
MICHAEL J. ASTRUE,)	SUMMARY JUDGMENT
Commissioner of Social)	
Security,)	
)	
Defendant(s).)	
_____)	

Plaintiff Jo Ann E. Haseltine seeks review of the Commissioner of Social Security's final decision that she did not qualify for social security insurance disability benefit payments prior to September 1, 2001.¹ The parties have filed cross-motions for summary judgment. For the reasons set forth below, plaintiff's motion is **GRANTED IN PART** and the matter is **REMANDED** to the Commissioner of Social Security to determine the onset date of plaintiff's disability. Defendant's motion is **DENIED**.

¹ All parties have consented to my jurisdiction for all proceedings, including entry of final judgment, pursuant to 28 U.S.C. § 636(c).

1 On March 22, 2001, plaintiff filed an application for
2 benefits contending her disability onset date was May 20,
3 2000. (Administrative Transcript ["AT"] 227.) After her
4 application was denied several times, she had a hearing before
5 Administrative Law Judge Lazuran. (AT 60, 67, 77.) She was
6 accompanied by a non-lawyer representative.

7 During the hearing, Judge Lazuran suggested a compromise
8 finding of disability with an onset date of September 2001.²
9 (AT 566.) Plaintiff accepted the compromise, Judge Lazuran
10 excused the vocational expert who was set to testify and
11 issued a favorable decision on July 16, 2002 finding plaintiff
12 disabled with an onset date of September 1, 2001. (AT 30 -
13 41.)

14 After the decision, plaintiff received a Notice of Award,
15 informing her that her benefits would be reduced to reflect a
16 worker's compensation payment. (AT 159 - 166.) Plaintiff
17 appealed the workers' compensation offset issue to the Appeals
18 Council. (AT 100.) Her appeal was silent as to the issue of
19 the compromised onset date. Id. The onset issue was not

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21 ² According to the transcript of the hearing, Judge
22 Lazaran stated "I've gone over this pretty thorough and, you
23 know, I think, maybe I could suggest a sort of compromise in
24 this case and that would be that there'd [sic] be an onset
25 related to the time frame when Dr. [Newkirk] indicated her
26 functioning was less than it had been. She's been a bit
27 ambiguous about that. So, I think, you're going to need to
28 talk to her about this. I don't know if it's acceptable to her
but it appears that by September, 2001, he thought that she was
much more limited than she had been before and that's, somewhat
consistent with the statement from Dr. Shaunbraun who provided
a statement, I believe, in July, 2001 although I don't believe
he's been treating her. So I'm not sure, you know, how useful
that statement is but why don't you talk to [plaintiff] about
whether she'd be willing to accept that onset date in this
case." (AT 566.)

1 addressed in subsequent decisions and reviews. (AT 44, 55, 58
2 - 59, 107, 105, 123, 142.)

3 On March 30, 2004, plaintiff's representative, while
4 appealing a decision regarding the offset issue and an
5 overpayment issue, for the first time addressed the onset
6 issue. (AT 147 - 48.) The Appeals Council remanded
7 plaintiff's case, but not on the issue of the onset date. (AT
8 149 -151.) Administrative Law Judge Reite heard the remand
9 but denied a "motion to reopen" Judge Lazuran's decision as to
10 the onset date. (AT 19 - 27.) Plaintiff appealed Judge
11 Reite's decision and the Appeals Counsel denied her request
12 for review. (AT 478 -79, 9 - 12.) This suit followed.

13 The Social Security Commissioner's decision to deny
14 benefits will only be disturbed if it is not supported by
15 substantial evidence or is based on legal error. Batson v.
16 Comm'r of Soc. Sec., 359 F.3d 1190, 1193 (9th Cir. 2004);
17 Lewis v. Apfel, 180 F.3d 1094, 1098 (9th Cir. 2007). Here
18 Judge Lazuran's compromise offer constituted legal error.

19 Although plaintiff is now represented by counsel, her
20 claims are not always cogently presented or supported by
21 authority. What is clear is that plaintiff objects that
22 Judge Lazuran offered a compromise rather than developing the
23 record further on the issue of her onset date.

24 Based on the medical record and plaintiff's testimony, I
25 find that there was substantial evidence to support a finding
26 that plaintiff was disabled. In particular, her treating
27 physician, Dr. Newkirk, had opined on September 28, 2001 that
28 plaintiff was "incapable of accepting gainful employment,

1 even at the sedentary or semi-sedentary levels". (AT 441.)
2 Dr. Newkirk stated in his report that he had been treating
3 plaintiff since June of 2000 for an injury that occurred in
4 December of 1999. (AT 440.) While it is true that Dr.
5 Newkirk did not opine as to the onset date, other than the
6 fact that his letter is dated September 28, 2001, there is
7 little reason to believe that the onset date was September 1,
8 2001 and, judging from the medical history, many reasons to
9 believe it may have been earlier. At that point, Judge
10 Lazuran had a "duty to investigate the facts and develop the
11 arguments both for and against granting benefits". Sims v.
12 Apfel, 530 U.S. 102, 111 (2000).³ This could have been
13 accomplished by asking Dr. Newkirk for a further report,
14 having plaintiff examined by another doctor, or, perhaps, by
15 listening to the vocational expert who was waiting to
16 testify. 20 C.F.R. § 404.1512(e)(1). Instead of fulfilling
17 this duty, Judge Lazuran cut short the proceedings by
18 offering the compromise. This is where she erred legally,
19 inasmuch as nothing in the statutes or regulations that
20 govern an ALJ's duties at a disability hearing suggest that
21 the ALJ can avoid developing a complete record by offering a
22 compromise.⁴

23
24 ³ See also Brown v. Heckler, 713 F.2d 441, 443 (9th
25 Cir. 1983)(An ALJ has a "special duty to fully and fairly
26 develop the record and to assure that the claimant's interests
are considered."); Delorme v. Sullivan, 924 F.2d 841, 849 (9th
Cir. 1991)(ALJ's duty to develop the record "exists even when
the claimant is represented.")

27 ⁴ Because I find that the ALJ's conduct was
28 inconsistent with her statutory duties, I do not reach
plaintiff's constitutional claims.

1 Defendant does not contend that ALJs have the authority
2 to offer a compromise to applicant.⁵ Instead, defendant
3 argues that this Court does not have the authority to review
4 Judge Lazuran's 2002 decision, because plaintiff did not
5 raise the onset issue when she first appealed the ruling
6 pursuant to 20 C.F.R. § 404.986. Judge Reite refused to
7 consider the onset issue for that reason. In so arguing,
8 defendant is confusing exhaustion of administrative remedies
9 with exhaustion of issues.

10 As Sims v. Apfel makes clear, plaintiff exhausted her
11 administrative remedies when she appealed Judge Lazuran's
12 ruling, even though on different grounds. "Claimants who
13 exhaust administrative remedies need not also exhaust issues
14 in a request for review by the Appeals Council in order to
15 preserve judicial review of those issues." Sims, 530 U.S. at
16 112. This is because the need for issue exhaustion is weak
17 when the nature of the proceedings, as they are in the social
18 security context, are non-adversarial. Id. at 113.

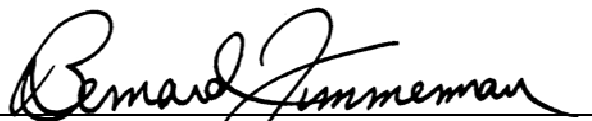
19 Because plaintiff had not raised the onset date issue
20 earlier, Judge Reite concluded plaintiff could not request
21 him to review the issue and denied her "motion to reopen"
22 Judge Lazuran's decision. (AT 20 - 21, 27.) Defendant
23 contends that Judge Reite's determination not to reopen Judge
24 Lazuran's 2002 decision was a discretionary decision pursuant
25

26 ⁵ Even after the Court requested supplemental briefs on
27 the question. Defendant did however argue that Judge Lazuran's
28 offer to plaintiff to stipulate to the September 2001 onset
date did not constitute an offer of compromise. However, the
record states otherwise. (AT 566.)

1 to 20 C.F.R. § 404.903(1), not a final decision that would be
2 subject to judicial review under 42 U.S.C. § 405(g) absent a
3 colorable constitutional claim. See Califano v. Sanders, 430
4 U.S. 99, 106 - 07 (1977); Taylor v. Heckler, 765 F.2d 872,
5 877 (9th Cir. 1985). Unlike Califano and Taylor, the onset
6 issue did not need to be reopened, notwithstanding counsel's
7 choice of words, because plaintiff was still going through
8 the review process. This court is reviewing Judge Lazuran's
9 conduct. Applying Sims, plaintiff is not precluded from
10 seeking judicial review of the onset date merely because she
11 did not address that issue in her initial request for review
12 to the Appeals Council. 530 U.S. at 113.

13 Accordingly, plaintiff's motion for summary judgment is
14 **GRANTED IN PART** and the matter is **REMANDED** to the
15 Commissioner of Social Security to determine the onset date
16 of plaintiff's disability.⁶ Defendant shall submit a proposed
17 judgment by **December 28, 2007**.

18 Dated: December 10, 2007

19 
20 Bernard Zimmerman
21 United States Magistrate Judge
22

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27 ⁶ Plaintiff's request that the court make twelve other
28 findings and determinations regarding her disability status is
DENIED.